

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

31434

FILE: B-218275 DATE: June 13, 1985  
MATTER OF: Metric Systems Corporation

## DIGEST:

1. Determination of whether a proposal should be included in the competitive range is a matter primarily within the contracting agency's discretion. Allegation that agency's decision to exclude protester from the competitive range was unreasonable is denied where agency's technical evaluation is not shown to be unreasonable and agency determined that protester's proposal was not reasonably susceptible of being made acceptable without major revisions.
2. Allegation that solicitation may have been inadequate is denied since protester has not met its burden of presenting sufficient evidence to support its position. Protester was provided an analysis of the technical evaluation of its proposal and was provided a sufficient basis to determine whether RFP misled the protester in the preparation of its proposal.
3. Protest that agency failed to inform offeror of all deficiencies in its proposal is denied where information solicited by agency after submission of initial proposals was only intended to clarify proposal ambiguities during evaluation, and was not the initiation of competitive range discussions. Agency is not obligated to conduct discussions with offeror eliminated from competitive range.

Metric Systems Corporation (Metric) protests its exclusion from the competitive range under request for

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proposals (RFP) No. DTFA01-84-R-27361 issued by the Federal Aviation Administration (FAA) for solid state receiver and digital moving target indicator (DMTI) modification kits for vacuum tube air route surveillance radars. (In simple terms, DMTI's are intended to remove clutter produced by stationary objects from radar screens.) Metric argues that the FAA's determination to exclude the firm was unreasonable and that the FAA failed to conduct meaningful discussions with Metric.

We deny the protest.

The solicitation was issued on July 10, 1984. The FAA initially screened proposals for ambiguities which offerors were then requested to clarify. Thereafter, the evaluation team, comprised of several radar systems technicians, evaluated the proposals and presented written reports to the Source Selection Evaluation Board (SSEB). The SSEB established a competitive range which included only those proposals that stood a reasonable chance of being selected for award. Metric was excluded from the competitive range. The FAA indicates that no award has yet been made under this solicitation.

The FAA states that in some areas Metric's proposal did not adequately communicate to the government what it intended to provide and in other areas Metric's proposed system design was not technically acceptable. The FAA argues that the deficiencies were of such a magnitude that Metric's proposal was not reasonably susceptible of being made acceptable without major revisions. Accordingly, the FAA contends that Metric's exclusion was proper.

Metric contends that the FAA failed to conduct meaningful discussions with the firm since the letter sent to Metric by the FAA requesting clarification of its proposal did not discuss any deficiencies in Metric's proposal. In addition, Metric argues that less than 10 percent additional effort was needed to address the problems identified by the FAA and that a major rewrite or redirection of effort was not necessary. Metric contends that many of the deficiencies were failures to provide detailed information which could easily have been corrected had Metric been given the opportunity to do so.

Also, Metric argues that the FAA's competitive range determination was not based on the proper standard since

even a proposal with major deficiencies may be included in the competitive range if it is susceptible to being made acceptable. Metric argues that the FAA failed to determine whether Metric's proposal was susceptible to being made acceptable and, given Metric's experience in the area and the fact that it designed and developed a DMTI for the military, it is implausible to conclude that Metric would have submitted a proposal that would not have satisfied the FAA's needs.

In addition, Metric contends that the FAA's competitive range determination left only one firm in the competition and that, as a result, the FAA's determination should be subject to close scrutiny. Metric argues that where only one firm was able to provide an acceptable proposal, it is very likely that the solicitation itself was flawed. Metric contends that there is a close question concerning the acceptability of its proposal and that, under the circumstances, the FAA's decision to exclude Metric lacked a reasonable basis.

It is well established that the determination of whether a proposal should be included in the competitive range is a matter primarily within the contracting agency's discretion. Our Office will not disturb such a determination unless it is shown to be unreasonable or in violation of procurement laws or regulations. Leo Kanner Associates, B-213520, Mar. 13, 1984, 84-1 C.P.D. ¶ 299. In addition, we will closely scrutinize any determination that results in only one offeror being included in the competitive range. Falcon Systems, Inc., B-213661, June 22, 1984, 84-1 C.P.D. ¶ 658.

Generally, proposals considered within the competitive range are those which are technically acceptable or reasonably susceptible of being made acceptable through discussions--that is, proposals which have a reasonable chance of being selected for award. D-K Associates, Inc., B-213417, Apr. 9, 1984, 84-1 C.P.D. ¶ 396. However, even a proposal which is technically acceptable or susceptible of being made acceptable may be excluded from the competitive range if, based upon the array of scores actually obtained by the offerors, the proposal does not stand a real chance of being selected for award. Marvin Engineering Co., Inc., B-214889, July 3, 1984, 84-2 C.P.D. ¶ 15; Leo Kanner Associates, B-213520, supra, at 6.

Initially, we point out that we do not agree with the protester that the FAA's competitive range determination was based on the wrong standard or that the FAA made no determination as to whether Metric's underlying proposal was reasonably susceptible to being made acceptable. The agency report clearly indicates that the FAA considered Metric's proposal so deficient that it stood no real chance of being selected for award. The FAA found "that Metric's deficiencies were of such a magnitude that their proposal was not reasonably susceptible of being made acceptable except by furnishing major revisions . . . ." While an offer should be included where there is a real possibility that it can be improved to the point where it becomes most acceptable, our decisions have recognized that there is no requirement to do so where the agency determines that revisions, tantamount to the submission of a new offer, would be necessary to make the proposal acceptable. See Quad Systems, Inc., B-188732, July 28, 1977, 77-2 C.P.D. ¶ 55; Micronics, Inc., B-215266, Nov. 13, 1984, 84-2 C.P.D. ¶ 521. Accordingly, we find Metric's allegations in this regard to be without merit.

With respect to the specific deficiencies identified by the FAA, we note that contracting officers are given a considerable range of discretion in carrying out a technical evaluation and Metric's mere disagreement with the agency's evaluation does not meet the protester's burden of showing that the evaluation was unreasonable. Spectrum Leasing Corp., B-205781, Apr. 26, 1982, 82-1 C.P.D. ¶ 383. We have closely scrutinized the FAA's evaluation of Metric's proposal and on the record before us, we are unable to conclude that the FAA's technical conclusions were unreasonable.

In this regard, we note that although Metric may have developed a DMTI for the military, the RFP called for more than just this item and that the DMTI is only one of two major subsystems which must be successfully integrated into the radars. Moreover, although we agree in some minor instances with Metric's challenges to specific FAA comments on Metric's proposal, we find that in the vast majority of cases, the FAA's assessment of Metric's proposal was reasonable. For example, the RFP required in paragraph 3.6.3.1 that the long term stability of the coherent oscillator be equivalent to  $\pm .005$  percent of output frequency per week; Metric took exception to this

requirement. Also, Metric acknowledges that it failed to provide a parts standardization plan and spares provisioning plan as required by the RFP. In addition, the FAA found that Metric either failed to address or adequately address several RFP requirements, an assessment with which we concur and which, in many instances, Metric concedes in its point-by-point refutation of the FAA's evaluation.

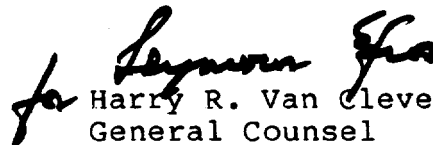
Although Metric argues that the deficiencies in its proposal are merely insignificant informational defects which would not have taken a great deal of time or effort to remedy, we find that the record does not support Metric's assertion. The record shows that there was a substantial disparity between Metric's evaluated score and that of the highest rated offeror and our review confirms the FAA's determination that Metric did not respond to the requirements set forth in the RFP in some areas and failed to adequately detail its technical approach in other areas. We note that an agency's technical evaluation is dependent upon the information furnished in the proposal and the burden is clearly upon the offeror to submit an initial proposal that is adequately written. Marvin Engineering Co., Inc., B-214889, supra. While Metric argues that it could easily correct the problems identified by the FAA, the FAA determined that the additional changes and material required to make Metric's proposal competitive would constitute a major revision to the original proposal. Under the circumstances, and despite Metric's disagreement with the FAA in this regard, we conclude that there is a reasonable basis for this determination.

With respect to Metric's allegation that the solicitation in this case may have been inadequate, no evidence has been presented to support this contention. Metric argues that it is not possible to determine the degree of inadequacy without an overall analysis of the competitive range which has not been provided to Metric. However, Metric was provided a detailed analysis of the evaluation of its proposal and, in our view, this information provided Metric with a sufficient basis to determine to what extent, if any, the RFP misled Metric in the preparation of its proposal. See Laser Photonics Inc., B-214356, Oct. 29, 1984, 84-2 C.P.D. ¶ 470. The protester bears the burden of presenting sufficient evidence to

establish its position and under the circumstances, we do not believe Metric has met this burden. See Magnaflux Corp., B-211914, Dec. 20, 1983, 84-1 C.P.D. ¶ 4.

Finally, we believe that Metric's contention that the FAA failed to conduct meaningful discussions with the firm is based, in part, on a misinterpretation of the FAA's request for clarification of initial proposals. The FAA's letter, requesting that Metric clarify its proposal in certain areas, was not the initiation of discussions, but was a minor part of the ongoing evaluation process to determine which offerors were within the competitive range. Thereafter, the FAA determined that Metric had no reasonable chance for award and eliminated Metric from the competitive range. In these circumstances, the agency had no obligation to enter into discussions with Metric. Informatics General Corp.--Request for Reconsideration, B-210709.2, Nov. 18, 1983, 83-2 C.P.D. ¶ 580; ALM, Inc., Technology, Inc., B-217284, B-217284.2, Apr. 16, 1985, 85-1 C.P.D. ¶ 433.

The protest is denied.

  
Harry R. Van Cleve  
General Counsel